

1337

United States

1337

Circuit Court of Appeals

For the Ninth Circuit.

NORTHERN COMMERCIAL COMPANY OF
ALASKA, a Corporation,

Plaintiff in Error,

vs.

TERRITORY OF ALASKA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the Territory of Alaska,
Fourth Division.

FILED

JAN 15 1923

F. D. MONCKTON,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

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vs.
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

JOHN A. CLARK, Attorney for Defendant and Plaintiff in Error, Fairbanks, Alaska.

JOHN RUSTGARD, Attorney General for Alaska, Juneau, Alaska, GUY B. ERWIN, United States District Attorney, Fairbanks, Alaska, Attorneys for Plaintiff and Defendant in Error.
[1*]

In the District Court for the Territory of Alaska,
Fourth Division.

No. 2600.

TERRITORY OF ALASKA,

Plaintiff,

vs.

NORTHERN COMMERCIAL COMPANY OF
ALASKA, a Corporation,

Defendant.

Praeceptum for Transcript of Record.

To Rob't W. Taylor, Clerk of the Above-entitled Court:

You will please prepare transcript of the record in the above-entitled cause, to be filed in the office of the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, upon writ of error heretofore perfected to said Court, and will include in said transcript the following documents, papers and records, to wit:

*Page-number appearing at foot of page of original certified Transcript of Record.

2 *Northern Commercial Company of Alaska*

1. Complaint.
2. Demurrer to complaint.
3. Minute order of date of November 8, 1922, overruling demurrer to complaint.
4. Memorandum decision of Court on demurrer.
5. Minute order of clerk on November 24, 1922, relative to defendant declining to plead further, and motion for judgment on pleadings made by plaintiff, and order for judgment on pleadings.
6. Judgment.
7. Petition for writ of error.
8. Assignment of error.
9. Order allowing writ of error and fixing supersedeas bond.
10. Order relative to supersedeas bond on writ of error.
11. Writ of error.
12. Citation of writ of error.
13. Undertaking on writ of error and supersedeas with order approving same. [2]
14. Designation of place for hearing writ of error.
15. Order extending time for docketing and entering writ of error with clerk of the Circuit Court of Appeals.
16. Stipulation relative to printing record.
17. Praecipe for transcript.
18. Petition for order extending time within which to file and docket cause on writ of error.

This transcript to be prepared as required by law and the orders and rules of this Court, and of the United States Circuit Court of Appeals for the

Ninth Circuit, and to be filed in the office of the Clerk of the United States Circuit Court of Appeals at San Francisco, California, on or before the 11th day of January, 1923, pursuant to the order of this Court extending time.

Dated at Fairbanks, Alaska, this 24th day of November, 1922.

JOHN A. CLARK,
Attorneys for Defendant in Error.

Due service of the foregoing praecipe for transcript, and receipt and copy thereof, acknowledged this 24th day of November, 1922.

JOHN RUSTGARD,
C. B. ERWIN,
Attorney for Defendant in Error.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [3]

[Title of Court and Cause.]

Complaint.

Plaintiff herein complains of defendant and for cause of action alleges:

FIRST CAUSE OF ACTION.

I.

That defendant is and during all the time herein mentioned has been a corporation duly organized and existing as such under and by virtue of the laws of the State of Washington and during the time

4 *Northern Commercial Company of Alaska*

herein mentioned was engaged in dealing in furs at Circle in Circle Recording Precinct, Territory of Alaska, and as such had and held a license as a stationary fur buyer at said place under and pursuant to the provisions of Chapter 42 of the Laws of Alaska for the year 1921.

II.

That while such stationary fur buyer and licensee at said place defendant purchased or otherwise acquired on and between the 13th day of January and the 27th day of July, 1922, the following pelts, to wit: 3 mink, 9 marten, 6 lynx, 2 beaver, 1002 muskrats.

III.

That by reason of said facts there became due and owing the Territory of Alaska under and pursuant to the provisions of said Chapter 42 the following license tax, to wit: On each mink pelt the sum of 25¢, on each marten pelt the sum of 50¢, on each lynx pelt the sum of 50¢, on each beaver pelt the sum of 50¢, on each muskrat pelt the sum of 5¢, and that by reason [4] of said facts the aggregate license tax thus owing from defendant to plaintiff on said pelts above enumerated is the sum of fifty-nine dollars and thirty-five cents (\$59.35).

IV.

That no part of said tax has ever been paid though often demanded, and the defendant refuses to pay the same or any part thereof.

V.

That said tax is a first and paramount lien upon

the pelts above enumerated and upon all the other property of the defendant.

SECOND CAUSE OF ACTION.

I.

That the defendant is and during all the time herein mentioned was a corporation duly organized and existing as such under and by virtue of the laws of the State of Washington and during the time herein mentioned was engaged in dealing in furs at Tanana in Fort Gibbon Precinct in the Territory of Alaska, and as such had and held a license as a stationary fur buyer at said place under and pursuant to the provisions of Chapter 42 of the laws of Alaska 1921. That while said stationary fur buyer and licensee at said place defendant purchased or otherwise acquired on and between the first day of January and the thirty-first day of July, 1922, the following pelts, to wit: 34 black bear, 356 beaver, 4 cross-fox, 28 red fox, 4 white fox, 477 marten, 155 mink, 12 lynx, 17 land otter, 20,292 muskrats, 169 weasel.

III.

That by reason of said facts there became due and owing the Territory of Alaska under and pursuant to the provisions of said Chapter 42 the following license tax, to wit: On each black bear pelt 50¢; on each beaver pelt 50¢ on each cross fur pelt \$1.00; on each red fox pelt 50¢; on each white fox pelt \$1.00; on each marten pelt 50¢; on each mink pelt 25¢; on each lynx pelt 50¢; on each land otter pelt 50¢; on each muskrat pelt 5¢; on each weasel pelt 5¢; and that by reason of said facts the aggregate license tax

thus owing from defendant to plaintiff on said pelts above [5] enumerated is the sum of \$1531.80.

IV.

That no part of said tax has ever been paid though often demanded and defendant refuses to pay the same or any part thereof.

V.

That said tax is a first and paramount lien upon the pelts above enumerated as well as upon all other property belonging to defendant.

WHEREFORE plaintiff demandes judgment against the defendant in the sum of \$1591.15, together with the costs and disbursements herein and prays the Honorable Court that said judgment be decreed to be a first and paramount lien upon the pelts above enumerated and upon all other property of the defendant.

JOHN RUSTGARD,
Attorney General for Alaska.

United States of America,
Territory of Alaska,
Fourth Judicial Division,—ss.

John Rustgard, being first duly sworn, deposes and says that he is Attorney General for the Territory of Alaska; that he has read the foregoing complaint and believes the same to be true.

JOHN RUSTGARD.

Subscribed and sworn to before me this 24th day of August, A. D. 1922.

[Seal]

EARNEST B. COLLINS,
Notary Public in and for the Territory of Alaska.

My commission expires 18th day of November, 1923.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Aug. 24, 1922. Robt. W. Taylor, Clerk. By R. H. Geoghegan, Deputy. [6]

[Title of Court and Cause.]

Demurrer.

Comes now the defendant above named and demurs to plaintiff's complaint on file in the above-entitled cause upon the following grounds, to wit:

Demurs to the alleged first cause of action upon the grounds:

1. That the matters and things therein set forth do not constitute a cause of action against this defendant.

2. That Chapter 42 of the Session Laws of the Territory of Alaska, for the year 1921 is void for the following reasons:

- a. That the subject matter of said act is not set forth in the title thereto.
- b. That the Alaska legislature was without power or jurisdiction to enact said law and said act is in violation of the provisions of the Organic Act under which said legislature was created.
- c. That said Act is in violation of Interstate Commerce and interferes therewith and is void by reason thereof.

- d. That said Act of the said legislature is not applicable to the Territory of Alaska and is not made so by the terms thereof.
- e. That that portion of said law which attempts to levy a tax upon furs is void.

Demurs to the alleged second cause of action upon the grounds:

1. That the matters and things therein set forth do not constitute a cause of action against this defendant. [7]

2. That Chapter 42 of the Session Laws of the Territory of Alaska, for the year 1921 is void for the following reasons:

- a. That the subject matter of said act is not set forth in the title thereto.
- b. That the Alaska legislature was without power or jurisdiction to enact said law and said act is in violation of the provisions of the Organic Act under which said legislature was created.
- c. That said Act is in violation of Interstate Commerce and interferes therewith and is void by reason thereof.
- d. That said Act of said legislature is not applicable to the Territory of Alaska and is not made so by the terms thereof.
- e. That that portion of said law which attempts to levy tax upon furs is void.

WHEREFORE, defendant prays that said complaint be dismissed and that defendant go hence with his costs incurred herein.

JOHN A. CLARK,
Attorney for Defendant.

Due service of the foregoing and receipt of a copy thereof is hereby admitted this 30 August, 1922.

JOHN RUSTGARD.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Aug. 30, 1922. Robt. W. Taylor, Clerk. By R. H. Geoghegan, Deputy. [8]

[Title of Court and Cause.]

Minutes of Court—November 8, 1922—Order Overruling Demurrer.

Now, on this day, G. B. Erwin, United States Attorney, appearing for the plaintiff, John A. Clark, Esq., appearing for the defendant, the Court having heretofore taken this matter under advisement—

IT IS ORDERED that defendant's demurrer be, and it is hereby, overruled.

CECIL H. CLEGG,

District Judge. [9]

[Title of Court and Cause.]

Memorandum Opinion on Demurrer.

This is an action by the Territory to recover the amount of unpaid license fees and declaring a lien for the business of dealing in furs as a stationary fur buyer within the Territory for the year 1921, pursuant to the provisions of Chapter 42 of the Session Laws of Alaska, 1921, page 132.

There are two causes of action; one embracing the business of the defendant at Circle and the other at Tanana, Alaska. The total amount claimed to be due is \$1591.15.

The defendant has demurred to the separate causes of action on the grounds: (a) That the facts stated do not constitute a cause of action against the defendant; and, (b) that Chapter 42 of the Session Laws of the Territory above referred to is unconstitutional and void for the following reasons:

First: That the tax imposed is a property tax in the guise of a license tax; and

Second: That the act embraces more than one subject, and that the subject thereof is not embraced in the title.

The title of the Act and sections I, II, III, X and XI, are especially involved in these objections.

All the provisions of the Act are criticised by counsel, but the Court's consideration of them is limited to the scope of the grounds assigned and relied upon by the demurrer. [10]

It is conceded by the parties that the defendant has paid the license fee prescribed by Section I of the Act under consideration.

A decision on subdivision "B" of the demurrer will cover the entire grounds thereof.

The Court recognizes the rule to be that every presumption is in favor of the validity of legislative acts, and the obligation rests on the Court to so construe them as to make them operative.

1 Mont. 21 (205 Pac. Rep. 962).

In the last cited case, page 963, it is said:

“It is a universally recognized rule of construction in testing the validity of a statute subject to two constructions, one of which will uphold its validity, while the other will condemn it, that the former will be adopted if it can be done without violence to the fair meaning of the words employed. *State vs. Kahn*, 56 Mont. 108, 182 Pac. 197.”

In the case of *State vs. State Board of Equalization*, 56 Mont. 413, 85 Pac. 708, 86 Pac. 697, it is said: “Every reasonable doubt favors the validity of the statute.” This is also the rule in the State of Oregon. “It may be premised that courts will not pronounce an act of the legislature void or unconstitutional unless such unconstitutionality clearly appears beyond a reasonable doubt.”

Cline vs. Greenwood, 10 Ore. 230.

Kadderly vs. Portland, 44 Ore. 118, 74 Pac. 710,
75 Pac. 222.

State vs. Walton, 53 Ore. 557, 99 Pac. 431, 101
Pac. 389, 102 Pac. 173.

Straw vs. Harris, 54 Ore. 424, 103 Pac. 777.

Miller vs. Henry, 124 Pac. 198.

Pleasant Grove City vs. Holman, 202 Pac. 1098.

It is also said by Chief Justice Waite in the *Sinking Fund* cases, 99 U. S. 718: Every possible presumption is indulged “in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt.” [11]

Mr. Justice Peckham, in *Nicol vs. Ames*, 173 U. S. 515, said: “It is only when the question is

free from any reasonable doubt that the Court should hold an act of the law-making power of the nation to be in violation of that fundamental instrument upon which all the powers of the Government rest." This is the undoubted rule of decision as applied in a great number of cases both by the Supreme Court and the inferior Federal Courts.

In the case of *The Abhy Dodge*, 223 U. S. 175, Mr. Chief Justice White, speaking of a statute of the United States, said:

"This follows because of the elementary rule of construction that where two interpretations of a statute are in reason admissible, one of which creates a repugnancy to the Constitution and the other avoids such repugnancy, the one which makes the statute harmonize with the Constitution must be adopted."

The Court approaches the consideration of the question to be determined in the light of the foregoing decisions. I must also ascertain, if possible, from the Act itself and the declaration of the legislature therein, its main purpose.

"The declared purpose of the Act has to be accepted as true unless incompatible with its meaning and effect."

98 N. E. 1059, *White Dental Mfg. Co. vs. Commonwealth*.

See, also, *Camas Stage Co. vs. Kozer*, 209 Pac. 96.

In *Flint vs. Stone-Tracy Co.*, 220 U. S. 145, the Supreme Court says:

“While the mere declaration contained in that statute, that it shall be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the Act, nevertheless the declaration of the law-making power is entitled to much weight.”

It will be seen that the title of the Act is “To Impose a License Tax on the Business.” A license tax on business is not new in this Territory. We not only have a license tax on business imposed by the Federal Government, [12] but we have previously had two acts of the legislature with reference to license taxes on business. Session Laws, 1913, Chapter 52, approved May 1, 1913; also Session Laws 1915, Chapter 76, approved April 29, 1915. The validity of these Acts on certain classes of business have been uniformly sustained.

Alaska, Fish, Salt & By-Products Co. vs. Smith, (U. S.), 65 Law Ed. 489.

Alaska-Pacific Fisheries Co. vs. Alaska, 236 Fed. 52.

Hoonah Packing Co. vs. Alaska, 236 Fed. 61.

Alaska Salmon Co. vs. Alaska, 236 Fed. 62.

Alaska-Mexican Gold Mining Co. v. Alaska, 236 Fed. 64.

Alaska-Pacific Fisheries vs. Alaska, 236 Fed. 70.

In the above case of the Alaska Fish, Salt & By-Products Co. vs. Smith, the Court by Mr. Justice Holmes, says:

“The provisions against taxing in excess of one per centum of the assessed valuation of property does not apply to a license tax like this. This is not a property tax.”

The Court can see no difference in principal from a license tax of two dollars a barrel and two dollars a ton, respectively, upon persons engaged in the business of manufacturing fish oil, fertilizer and fish meal, in whole or in part, from herring and the license tax required of persons engaged in fur farming, trapping and trading in pelts and skins of fur bearing animals.

Counsel for the defendant contends as follows: “The defendant contends that, while the legislature was authorized to impose *as* a license tax as a condition to the conducting of business by the defendant, and that they could have elected to make an absolutely arbitrary tax of any given amount, even a tax so high that it would have been confiscatory of their property, or they could have levied an excise tax based upon the gross or net business done by the fur buyer or dealer, [13] yet when they attempted to levy a tax upon each piece of property handled by the fur buyer or dealer under his license, that they were then levying an *ad valorem* on the *rem* and that this tax was not levied in accordance with the provisions of the organic act; that is to say, no attempt was made to ascertain the actual value of the property taxed, but an arbitrary amount was fixed upon each pelt, and that at a rate far in excess of the total taxable rate that might be fixed by the legislature.

This argument is based upon the fact that the legislature, in Section One of the Act, prescribes a preliminary license fee of \$10.00 for the business of fur farming, \$25.00 for stationary fur buyers, and \$150.00 for itinerant fur buyers, and that Section 3 says:

“In addition to the license fee above provided for the licensee shall pay to the Commissioner who issues the license the following license fees on each pelt taken by a fur farmer, or purchased, or otherwise acquired, by a fur buyer, or taken by a trapper and not sold to a licensed fur buyer, to wit”:

Then follows a designation of the various kinds of skins of fur-bearing animals following by the amount of license tax payable upon each kind.

The legislature might have incorporated all of Section 3 into Section 1 if they had chosen to do so; but it is clear that the two sections must be read together and given effect accordingly and that the clear intent of the legislature was to require persons engaged in the designated businesses to declare themselves before the Commissioner and pay the preliminary license fee, and at the conclusion of their year's business to pay the amounts due to the Territory based and computed upon the number and kinds of skins taken, purchased or otherwise acquired, so that the method they adopted, according to their lights, was a fair and equitable method of determining the measure or *quantum* of the license tax payable. While the method adopted by the legislature may be subject to some criticism, it can-

not be fairly said that the license fees imposed are a tax upon the property.

In the case of the Alaska-Mexican Gold Mining Co. vs. The Territory [14] *supra*, the Circuit Court of Appeals, through Circuit Judge Hunt, says:

“It will be readily granted that the Act is not as explicit as it should be, and that its application calls for a postponement of the payment of the tax until the amount of revenue from the business taxed can be ascertained, but the fact that it is inartificially drawn and that its exact enforcement may be difficult ought not to make it invalid if the language used expresses a plain meaning by the law-making body,
* * * the intention being plain the inartificiality of the law should not result in its overthrow.” Citing:

Johnson vs. Southern Pacific, 196 U. S. 1, 49 Law Ed. 363.

Cliquot's Champagne, 70 U. S. 114, 18 Law Ed. 116.

U. S. vs. Stowell, 133 U. S. 1 (12), 33 Law Ed. 555.

While it is true that any business engaged in for profit is property in a sense, the license fees imposed by this Act are clearly in the nature of an excise for the privilege of carrying on business and in no sense a property tax.

The defendant earnestly relies upon the case of Thompson vs. McLeod, 112 Miss. 383, 73 So. 193, in

contending that the tax imposed by the Act in question is a property tax.

In that case the Court says:

“The act here assailed does not even attempt to require a license or permit to be issued by any officer or department of the Government as a condition precedent to the right of a citizen to extract crude turpentine from pine trees.”

Further it says:

“Section 1 of the act makes no effort to conceal the subject matter of the tax. It expressly declares that it is ‘levied on the gross annual cutting or extraction.’ ”

Further on it says:

“Appellee, in taking crude gum from his own trees, is not directly engaged in any kind of mercantile business. He does not bring his wares into the market place nor upon stock markets.”

There is no question in this particular case as to whether the occupation of fur farming, stationary fur buyer or trapper is a business or occupation upon which the legislature may lawfully impose license fees for the privilege of engaging in the business. Furthermore, a property [15] tax is an incident of ownership, while in the business of a stationary fur buyer the person so engaged “may purchase or otherwise acquire,” as the act says, raw skins of fur-bearing animals in this country without necessarily having any ownership therein himself.

I therefore hold that the provisions of the act do not contravene Section 9 of the Organic Act, which

provides that "all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws and the assessment shall be according to the actual value thereof. No tax shall be levied for Territorial purposes in excess of one per cent upon the assessed valuation of the property therein in any one year."

Section 8 of the Organic Act (Act of Congress August 24, 1912, 37 Stat. 512) provides.—

"That the enacting clause of all laws passed by the legislature shall be 'Be it enacted by the legislature of the Territory of Alaska.' No law shall embrace more than one subject, which shall be expressed in its title."

It is contended by the defendant that the act assailed violates this provision of the Organic Act, and that it in effect imposes a license tax but really imposes a property tax, and in addition thereto provides penalties for failure to abide by the various terms of the act, and further provides for imprisonment for failure to abide by the provisions of the law.

From which I have said heretofore I find no merit in the contention that this act imposes anything more than a license tax; but it does provide for certain penalties for failure to observe its requirements. These requirements, however, are the same as those imposed in all previous acts of the legislature and of Congress with reference to business taxes, and the Court, in considering this particular act, must take notice of previous legislation on the subject.

It is contended by counsel that this provision of the Organic Act is mandatory, and in this the Court agrees; but it is not necessary that the subject matter as expressed in the title of the act under this constitutional requirement should give an index of all the provisions of the act. [16]

In the case of *In Re County Commissioners*, 98 Pac. 557, in discussing a similar constitutional provision, the Court says:

“The abuses which called such provision into existence are clearly understood and are two-fold. Each subject brought into the deliberation of the legislative department of the government is to be considered and voted on singly, without having associated with it any other measure to give it strength. Experience had shown that measures having no common purpose, and each wanting sufficient support on its merits to secure its enactment, have been carried through legislative bodies and enacted into laws, when neither measure could command or merit the approval of a majority of that body.

“The other abuse against which this provision was leveled was to prevent matters foreign to the main objects of a bill from finding their way into such enactment surreptitiously. Substantially such a provision is found in many of the State Constitutions, and, as is usual in such cases, judges have differed in their interpretation of the same. The best considered cases, however, appear to have established the following propositions: That the clause is man-

datory; that its requirements are not to be exactingly enforced; or in such a technical manner as to cripple legislation; that the title of a bill may be very general, and need not contain an abstract of the contents of the bill, or specify every clause therein, it being sufficient if they are all referable and cognate to the subject expressed. Everything which is necessary to make a complete enactment, or to result as a complement of the thought therein contained, is included in and authorized by such title expressed in general terms.”

“Weaver et al. vs. Lapsley, 43 Ala. 224.

Walker vs. State, 49 Ala. 329.

Lockhart vs. City of Troy, 48 Ala. 579.

Ballentyne vs. Wickersham, 75 Ala. 535.

State vs. Rogers, 107 Ala. 444, 19 South. 909,
32 L. R. A. 520.

Lindsay vs. United Savings & Loan Association
et al., 120 Ala. 172, 24 South. 171, 42 L. R. A.
783.

Woodson vs. Murdock, 22 Wall. 351, 22 L. Ed.
716.

State ex rel. vs. Squires, 26 Iowa, 340.

Cannon vs. Mathes, 8 Heisk. (Tenn.) 504.

State vs. Miller, 45 Mo. 495.

Chiles vs. Drake, 2 Metc. (Ky.) 146, 74 Am.
Dec. 406.

Keller vs. State, 11 Md. 525, 69 Am. Dec. 226.

[17]

Simpson vs. Bailey, 3 Or. 515.

Lafon vs. Defrocq et al., 9 La. Ann. 350.

State vs. Gerhart, 44 N. E. 475.”

cited with approval and followed in *State vs. Bonner*, 208 Pac. 827.

Giving effect to the rules therein announced, I see no such weakness in the adoption by the legislature of a broad and comprehensive title in this Act as renders the act unconstitutional by reason thereof, nor does such a result follow the failure of the legislature to state in the title with the same fullness as in previous acts on the same subject the contents thereof. There is no possibility that any of the abuses which this constitutional provision was intended to prevent arose by the use of a broad, general and comprehensive title.

The Court also holds by necessity that the subject of the act is clearly expressed in the title.

Other criticisms leveled in the brief at other sections of the act are unsubstantial and do not fairly arise under the issues.

The demurrer may be overruled.

CECIL H. CLEGG,
District Judge.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 8, 1922. Robt. W. Taylor, Clerk. By Frank O'Farrell, Deputy. [18]

[Title of Court and Cause.]

**Minutes of Court — November 24, 1922 — Order
Granting Motion for Judgment on Pleadings.**

Now on this day John A. Clark, Esq., counsel for the defendant, stated to the Court that he declined

to plead further herein, whereupon G. B. Erwin, Esq., counsel for the plaintiff, offered oral motion for judgment on the pleadings in behalf of the pleader, and the Court being fully and duly advised in the premises—

IT IS ORDERED that plaintiff's motion for judgment on the pleadings be, and is hereby granted.

CECIL H. CLEGG,

District Judge. [19]

[Title of Court and Cause.]

Judgment.

This cause coming regularly on for hearing on motion of attorney for plaintiff for judgment on the pleadings; and it appearing from the files and proceedings in said cause that on the 8th day of November, 1922, an order of this Court was duly made and entered herein overruling defendant's demurrer to plaintiff's complaint; and the defendant, by its attorney John A. Clark, Esq., having this day in open court declined to plead further to said complaint, the Court being fully advised in the premises, does hereby grant plaintiff's motion for judgment as prayed for in said complaint.

And it appearing to the satisfaction of the Court from the records and files herein that on and between the 13th day of January and the 27th day of July, 1922, the defendant Northern Commercial Company of Alaska acquired by purchase or otherwise pelts of wild fur-bearing animals, to wit: 3 mink, 9 marten, 6 lynx, 2 beaver and 1002 muskrats

on which defendant has failed, neglected and refused as licensed fur buyer to pay the tax due plaintiff thereon under the provisions of Chapter 42, Session Laws of Alaska, 1921, in the sum of \$59.35 as alleged in the first cause of action in the complaint herein; and it further so appearing that on and between the 1st day of January and the 31st day of July, 1922, the defendant acquired by purchase or otherwise pelts of wild fur-bearing animals, to wit: 34 black bear, 356 beaver, 4 cross-fox, 28 red fox, 4 white fox, [20] 477 marten, 155 mink, 12 lynx, 17 land otter, 20,292 muskrats, and 169 weasel, on which defendant has failed, neglected and refused to pay as licensed fur buyer, the tax due plaintiff thereon as provided by said Territorial Act, in the sum of \$1531.80 as set forth in plaintiff's said second cause of action, and that said tax constitutes *as* first and paramount lien upon said taxed property and all the property of defendant.

NOW, THEREFORE, it is hereby considered ordered and ADJUDGED that the Territory of Alaska, plaintiff, do have and recover of and from the Northern Commercial Company of Alaska, defendant, upon the first cause of action set out in its complaint herein, the sum of fifty-nine and 35/100 Dollars (\$59.35) and upon the second cause of action set out in its complaint herein, the sum of fifteen hundred thirty-one and 80/100 Dollars, together with plaintiff's costs and disbursements herein, taxed at the sum of \$14.60, making in all the total sum of \$1605.75.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that said judgment be and the same hereby is declared to be a first and paramount lien upon the taxed property hereinbefore described; that said property be by the U. S. Marshal for said Territory and Division, seized and sold as provided by law for the sale of property upon execution and out of all sums realized from such sale the costs and disbursements of this action and the costs incurred by such sale, together with the amount of the taxes hereinbefore found to be due be first paid, and the remainder if any be paid to the defendant; that in case such taxed property fail to produce at such sale sufficient to pay such costs and disbursements, costs of sale and tax, then plaintiff to have execution against the property of the defendant for the balance due thereon.

Done in open court at Fairbanks, Alaska, this 24th day of November, 1922.

Entered in Court Journal No. 15, 564.

CECIL H. CLEGG,

District Judge. [21]

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [22]

[Title of Court and Cause.]

Petition for Writ of Error.

The Northern Commercial Company of Alaska, a corporation, defendant in the above-entitled action, feeling itself aggrieved by the order of this Court

made and entered on the 8th day of November, 1922, overruling defendant's demurrer to plaintiff's complaint on file herein, and by the judgment of the above-entitled court given, made and entered in the above-entitled cause on the 24th day of November, 1922, which said judgment was in favor of plaintiff and against defendant, and was for the sum of \$1591.15, together with costs in the sum of \$14.60, in which judgment, and in the proceedings had prior thereto, in this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Now comes John A. Clark, attorney for defendant, and petitions this Honorable Court for an order allowing said defendant to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California, according to the laws in that behalf made and provided. [23]

And whereas, said defendant desires a stay of execution pending the hearing of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit,—

NOW, THEREFORE, said defendant petitions that an order may be made fixing the amount of the security which shall be given and furnished on the said writ of error to cover the costs incurred therein, and as a supersedeas, and that on the giving of such security, all further proceedings of this Court herein may be suspended and stayed until the determination of said writ of error by the

said United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will ever pray.

JOHN A. CLARK,
Attorney for Defendant.

Due service hereof admitted this 24th day of November, 1922.

JOHN RUSTGARD,
G. B. ERWIN,
Attorneys for Plaintiff.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [24]

[Title of Court and Cause.]

Assignment of Error.

Comes now the defendant in the above-entitled cause, being the plaintiff in error, and assigns the following error as having been committed by the above-named court prior to and at the rendition of the judgment given, made and entered in said cause on the 24th day of November, 1922, which error the said defendant intends to and does rely upon on defendant's writ of error to be prosecuted to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California, to wit:

I.

That the United States District Court for the Fourth Division of the Territory of Alaska erred in overruling the demurrer interposed by the de-

fendant and plaintiff in error to the original complaint filed in the cause.

II.

That said Court erred in upholding Chapter 42 of the Session Laws of the Territory of Alaska for the year 1921, and in refusing to declare Section 3 of said Act unconstitutional and void. [25]

III.

That said Court erred in assuming jurisdiction of said cause, and in refusing to dismiss said cause for lack of jurisdiction or authority to hear and determine same.

IV.

That said Court erred in giving, making, and entering judgment in favor of plaintiff and against defendant upon plaintiff's complaint on file in said cause, which said judgment was given, made and entered on the 24th day of November, 1922, and was for the sum of \$1591.15, together with costs in the sum of \$14.60.

V.

That said Court erred in failing to dismiss plaintiff's action.

VI.

That said Court erred in failing and refusing to enter judgment in favor of defendant.

WHEREFORE, plaintiff in error, defendant named above, prays that said order of said Court, overruling defendant's demurrer, and the judgment of said District Court made and entered on the 24th day of November, 1922, be reversed, and that said District Court for the Fourth Judicial Division for

the Territory of Alaska be ordered to enter Decree, reversing the decision of the lower Court in said cause, and sustaining defendant's demurrer to plaintiff's complaint on file in said action, and [26] dismissing said cause at plaintiff's cost.

JOHN A. CLARK,

Attorney for Plaintiff in Error.

Dated November 24, 1922.

Service of foregoing and receipt of copy thereof hereby admitted this 24 November, 1922.

JOHN RUSTGARD,

G. B. ERWIN,

Attys. for Plaintiff.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [27]

[Title of Court and Cause.]

Order Allowing Writ of Error and Fixing Supersedeas and Cost Bond.

On motion of John A. Clark, attorney for defendant, and the filing of his petition for writ of error and assignment of errors—

IT IS HEREBY ORDERED that a writ of error be, and the same is hereby, allowed to have reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, the order overruling defendant's demurrer, heretofore made and entered on the 8th day of November, 1922, and the judgment here-

tofore made and entered herein on the 24th day of November, 1922; and that the amount of the bond on said writ of error be, and the same is hereby fixed at the sum of Twenty-five Hundred Dollars (\$2500.00), to cover supersedeas and costs of defendant in error.

Done at Fairbanks, Alaska, on this 24th day of November, 1922.

CECIL H. CLEGG,

District Judge.

Due service admitted hereof this 24th day of November, 1922.

JOHN RUSTGARD,

G. B. ERWIN,

Attorneys for Plaintiff.

Entered in Court Journal No. 15, page 565. [28]

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [29]

[Title of Court and Cause.]

Writ of Error.

United States of America,

Territory of Alaska,—ss.

The President of the United States of America, to
the Honorable CECIL H. CLEGG, Judge of
the United States District Court, Fourth
Judicial Division, GREETING:

Because in the records and proceedings, as also
in the rendition of a Judgment dated the 24th day

of November, 1922, of a plea which is in said United States District Court for the Territory of Alaska, Fourth Judicial Division, before you between the Territory of Alaska, as plaintiff, and the Northern Commercial Company of Alaska, a corporation, as defendant, manifest error hath happened to the great prejudice and damage of said Northern Commercial Company of Alaska, as is said and appears in the petition herein;

We, being willing that error, if any hath happened, shall be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf do command you, if said judgment be therein given, then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all [30] things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, State of California, together with this writ, so as to have the same at said place, in said Circuit Court of Appeals on the 24th day of December, 1922, that, the records and proceedings aforesaid being inspected, the said Circuit Court of Appeals for the Ninth Circuit may cause further to be done therein to correct such error what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the Supreme Court of the United States, this 24th day of November, A. D. one thousand nine hundred and twenty-two.

ATTEST my hand and seal of the United States District Court for the Territory of Alaska, Fourth Judicial Division, at the Clerk's office in the town of Fairbanks, Alaska, this 24th day of November, A. D. one thousand nine hundred and twenty-two.

[Seal] ROBT. W. TAYLOR,
Clerk of the District Court for the Territory of Alaska, Fourth Judicial Division.

Allowed this 24th day of November, A. D. one thousand nine hundred and twenty-two.

CECIL H. CLEGG.
Judge of the District Court for the Territory of Alaska, Fourth Judicial Division.

Due service of the foregoing writ of error admitted this 24th day of November, 1922.

JOHN RUSTGARD,
G. B. ERWIN,
Attorneys for Plaintiff. [31]

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy.

[Title of Court and Cause.]

Citation on Writ of Error.

The President of the United States of America, to the Territory of Alaska, and JOHN RUSTGARD, Attorney General for the Territory of Alaska, and GUY B. ERWIN, United States District Attorney for the Fourth Division of the Territory of Alaska, its Attorneys, GREETING:

You are hereby cited and admonished to be and

appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City and County of San Francisco, State of California, within thirty days from the date of this citation, pursuant to the writ of error filed in the office of the Clerk of the United States District Court for the Territory of Alaska, Fourth Judicial Division, wherein the Northern Commercial Company of Alaska, a corporation, is plaintiff in error, and the Territory of Alaska is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in error in that behalf.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the Supreme Court of the United States of America, on this 24th day of November, A. D. one thousand nine hundred twenty-two, and in the year of our Independence the one hundred forty-seventh. [32]

Attest my hand and the seal of the above-named District Court, at Fairbanks, Alaska, on this 24th day of November, A. D. one thousand nine hundred twenty-two.

CECIL H. CLEGG.

District Judge.

Due service of the foregoing citation admitted this 24th day of November, 1922.

JOHN RUSTGARD,

J. B. ERWIN,

Attorneys for Defendant in Error. [33]

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy.

[Title of Court and Cause.]

Order Relative to Supersedeas Bond on Writ of Error.

The defendant having on this day filed its petition for writ of error from the order of this Court made and entered on the 8th day of November, 1922, overruling defendant's demurrer to plaintiff's complaint, and the judgment made and entered herein on the 24th day of November, 1922, in favor of plaintiff and against defendant, to the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, together with an assignment of error within due time, and also praying that an order be made, fixing the amount of security which defendant shall give and furnish on said writ of error, and that on the giving of such security, all further proceedings in this court be suspended and stayed until the determination of said writ of error by the said Circuit Court of Appeals, and said petition having been this day duly allowed and supersedeas and cost bond fixed.

NOW, THEREFORE, IT IS ORDERED: That upon defendant's filing with the Clerk of this court a good and sufficient bond in the sum of Twenty-five Hundred Dollars (\$2500.00), conditioned as a cost

and supersedeas bond, all as provided by law, [34] which said bond shall be approved by this Court, then and thereafter all proceedings in this Court shall be, and they are suspended and stayed until the determination of said writ of error by the said Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California.

Dated at Fairbanks, Alaska, this 24th day of November, 1922.

CECIL H. CLEGG,
District Judge.

Entered in Court Journal No. 15, page 565.

Due service of the foregoing Order admitted this 24th day of November, 1922.

JOHN RUSTGARD,
G. B. ERWIN,
Attorneys for Plaintiff.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [35]

[Title of Court and Cause.]

Supersedeas and Cost Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, The Northern Commercial Company of Alaska, a corporation, as principal, and George Preston and Harry DeYonge, as sureties, are held and firmly bound unto the Territory of Alaska, the defendant in error, in the just and full sum of Twenty-five Hundred Dollars (\$2500.00), to be paid

to said defendant in error, which payment to be well and truly made, we bind ourselves, our heirs, executors, successors in interest, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24th day of November, 1922.

WHEREAS, on the 24th day of November, 1922, in the United States District Court for the Territory of Alaska, Fourth Judicial Division, a Judgment was rendered against the said Northern Commercial Company of Alaska, a corporation, and the said defendant therein having obtained a writ of error and filed a copy thereof in the office of the Clerk of said court, to reverse the judgment aforesaid, and a Citation directed in said action to the Territory of Alaska, plaintiff therein, citing and admonishing it to be and appear at a session of the United States [36] Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, on the 24th day of December, 1922; and

WHEREAS, the plaintiff in error desires a stay of execution in the above-entitled action pending a decision upon said writ of error by the Circuit Court of Appeals for the Ninth Circuit:

Now, the condition of the foregoing obligation is such that if the said Northern Commercial Company of Alaska, a corporation, shall prosecute said Writ of Error to effect and answer and pay all judgments, damages and costs if it fail to make its said plea good, then the foregoing obligation to

be void; otherwise to remain in full force, effect and virtue.

NORTHERN COMMERCIAL CO. OF
ALASKA, a Corporation.

By GEORGE PRESTON,
Agent and Attorney in Fact,
Principal.

GEORGE PRESTON,
Surety.

HARRY de YONGE,
Surety.

Approved this 24th day of November, 1922,
CECIL H. CLEGG,
District Judge.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [37]

United States of America,
Territory of Alaska,—ss.

George Preston and Harry de Yonge, being first duly sworn according to law, each for himself and not one for the other, on his oath deposes and says:

I am one of the sureties on the foregoing bond; I am not an attorney at law, United States marshal, deputy marshal, clerk of the court, commissioner, or other officer of any court in Alaska, and am worth the sum of Twenty-five Hundred Dollars (\$2500.00) over and above all my just debts and liabilities in property not exempt from execution.

GEORGE PRESTON.

HARRY de YONGE.

Subscribed and sworn to before me this 24th day of November, A. D. 1922.

[Seal]

JOHN A. CLARK,

Notary Public in and for the Territory of Alaska.

My Commission expires Apr. 24, 1926.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [38]

[Title of Court and Cause.]

**Petition for Order Extending the Time Within
Which to File and Docket Cause on Writ of
Error.**

To the Honorable CECIL H. CLEGG, Judge of the
Above-entitled Court, and to the Plaintiff
Above Named and Its Attorneys:

Comes now the defendant above named and respectfully represents to this Court and petitions as follows, to wit:

That, owing to the great distance that Fairbanks, Alaska, is from San Francisco, California, where the writ of error sued out in the above-entitled cause is to be heard, the uncertainty of mail facilities, and the fact that it will require the Clerk of the District Court at Fairbanks several days to prepare and certify to the records in said cause, that it may not be practicable or possible to file and docket cause in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within the time allowed by law and the Order of this Court in allowing said writ of error,—

WHEREFORE, petitioner respectfully petitions this Court to make an order granting the defendant herein, plaintiff in error in said appeal, until and including the 11th day of January, 1923, within which to file and docket the said cause [39] on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

JOHN A. CLARK,

Attorney for Plaintiff in Error.

Receipt of copy of foregoing motion and notice thereof hereby acknowledged Nov. 24th, 1922.

JOHN RUSTGARD,

G. B. ERWIN,

Attys. for Plaintiff.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [40]

[Title of Court and Cause.]

Order Extending Time to and Including January 11, 1923, to File Record and Docket Cause.

This matter coming on for hearing on the motion of the defendant above-named, the plaintiff in error, for an order extending the time within which to file and docket the record herein on writ of error with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, and it appearing to the satisfaction of this Court that the time allowed by law and by the

orders of this Court allowing said writ of error is insufficient for the purpose, and that the plaintiff in error desires an extension of time until and including the 11th day of January, 1923, within which to file and docket said cause, as aforesaid, and all and singular the matters being fully understood and considered by this Court—

IT IS, THEREFORE, ORDERED: That the plaintiff in error be, and it is hereby given and granted until and including the 11th day of January, 1923, within which to file and docket its record on writ of error with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California. [41]

Done in open court at Fairbanks, Alaska, this 24th day of November, A. D. one thousand nine hundred and twenty-two.

CECIL H. CLEGG,
District Judge.

Entered in Court Journal No. 15, page 565.

Due service hereof admitted this 24th day of November, 1922.

JOHN RUSTGARD,
G. B. ERWIN,
Attorneys for Plaintiff.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [42]

[Title of Court and Cause.]

Designation of Place for Hearing Writ of Error.

To the Honorable CECIL H. CLEGG, Judge of
the Above-entitled Court, and to the Plaintiff
and Its Attorneys:

Comes now the defendant, plaintiff in error, in the above-entitled cause, and, pursuant to the provisions of the Act of Congress giving the designation of the place for hearing all writs of error to the plaintiff in error, does hereby designate the City and County of San Francisco, State of California, as the place for the hearing of the writ of error in the above-entitled action.

Dated at Fairbanks, Alaska, this 24th day of November, 1922.

JOHN A. CLARK,
Attorney for Defendant.

Due service of the foregoing is hereby admitted on this 24th day of November, 1922.

JOHN RUSTGARD,
G. B. ERWIN,
Attorneys for Plaintiff.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [43]

[Title of Court and Cause.]

Stipulation Relative to Printing of Record.

It is hereby stipulated that in printing the papers and records to be used on the hearing on writ of error in the above-entitled cause, for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the court and cause in full on all papers shall be omitted, except on the first page of said record, and that there shall be inserted in place of said title on all papers used as a part of said record the words, "Title of Court and Cause"; also that all endorsements on all papers used as a part of said record shall be omitted, except the Clerk's filing-marks and the admission of service.

Dated at Fairbanks, Alaska, this 24th day of November, 1922.

JOHN RUSTGARD,

G. B. ERWIN,

Attorneys for Plaintiff.

JOHN A. CLARK,

Attorney for Defendant.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 24, 1922. Robt. W. Taylor, Clerk. By Grace Fisher, Deputy. [44]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, Rob't W. Taylor, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of 44 pages, numbered from 1 to 44, inclusive, constitutes a full, true and correct transcript of the record on writ of error in cause No. 2600, Territory of Alaska, Plaintiff and Defendant in Error, vs. Northern Commercial Company, a Corporation, Defendant and Plaintiff in Error, and was made pursuant to and in accordance with the praecipe of the plaintiff in error filed in this action, and made a part of this transcript, and by virtue of the citation issued in said cause and is the return thereof in accordance therewith, and I certify that the writ of error, citation on writ of error, and order enlarging return day annexed hereto, are the originals thereof.

And I do further certify that the index thereof, consisting of page numbered i, is a correct index of said transcript; also that the cost of preparing said transcript and this certificate, amounting to Eleven and 30/100 Dollars (\$11.30), has been paid to me by counsel for plaintiff in error in this action.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of this court this 1st day of December, A. D. 1922.

[Seal] ROBT W. TAYLOR,
Clerk of the District Court, Territory of Alaska,
Fourth Division. [45]

[Endorsed]: No. 3959. United States Circuit Court of Appeals for the Ninth Circuit. Northern Commercial Company of Alaska, a Corporation, Plaintiff in Error, vs. Territory of Alaska, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Fourth Division.

Filed December 22, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

